

Read this before you start!

-
- 1.01 Introduction**
 - 1.02 The Legal Services Commission Manual**
 - 1.03 The LSC website**
 - 1.04 Civil and Family – key documentation**
 - 1.04 The Unified Contract
 - 1.05 The Unified Contract specification
 - 1.06 Frequently asked questions
 - 1.07 Eligibility guidance
 - 1.08 The Funding Code
 - 1.09 Costs assessment guidance
 - 1.10 Fee exemption and remission
 - 1.11 Criminal defence – key documentation**
 - 1.11 The Unified Contract (Crime)
 - 1.12 The Unified Contract Crime specification (July 2008)
 - 1.13 Eligibility guidance
 - 1.14 Costs assessment guidance

Introduction

- 1.01 This chapter's title is probably a counsel of perfection, and will be an unfulfilled aspiration for most caseworkers! However, the point we are trying to make is that there are lots of rules and guidance about doing publicly funded work; you need to be aware of what they are, and consult them where necessary.

If you don't, you may have applications or bills rejected by the Legal Services Commission (LSC) for technical errors, or refused because you have not explained your client's case in an appropriate way, or you may have claims for payment disallowed. All these things are important because they may cause your client unnecessary delay, waste your time, and could even threaten the financial viability of your organisation. If you are not sure what to do, look it up and discuss the issue with your supervisor.

The Legal Services Commission Manual

- 1.02 The Legal Services Commission Manual ought to contain all current documentation; but in recent times it has struggled to keep pace with the LSC's reform programme. In this book, we refer to paragraphs in the Manual (which all organisations must have – see the Unified Contract clause 7). The paragraph number tells you which volume you should look in:

Volume 1 – The Framework

Volume 2 – Civil Contracting

Volume 3 – The Funding Code

Volume 4 – Criminal Defence Service

References to paragraphs in the Manual in this book and in LSC documentation are in the form 1A-001, which means paragraph 001 of Part A of Volume 1.

Wherever possible, we tell you where you can download a document. We know it can be difficult to find documents on the LSC's website, so we have given website addresses to help you locate what you need, although these are subject to change.

The LSC website

- 1.03 Everyone working in legal aid needs to keep up with the latest developments, and the LSC's reform programme means there's a lot of them! The LSC is sending out less and less information on paper, and relying on you far more to check what's on its website. You wouldn't want to miss an opportunity to tender, or find that you were using out-of-date forms, for example. So what's the best way of keeping up to date?

You could do worse than to check the LSC website every week. If you are really being thorough, you could check the 'About Us' tab and then 'what's new', as where the LSC posts information depends on what it is about.

You might want to click the 'Find out more' at the bottom of the LSC's home page and sign up for RSS feeds. RSS (really simple syndication) feeds can be added to a feed reader or iGoogle homepage. You can also sign up to the LSC's newsletter, which will send you a weekly email with updates, announcements and changes. The updates give you a brief summary of the issue, and a link to further information. They make keeping up much easier.

Civil and Family – key documentation

The Unified Contract

- 1.04 The Unified Contract contains many detailed provisions concerning the way you work with clients, as well as setting out the formal relationship between your organisation and the LSC. It is in Volume 2 of the LSC Manual. You can download the contract from the LSC's website at: www.legalservices.gov.uk > Community Legal Service (CLS) > Civil contracts > The Unified Contract (Civil).

This section sets out where you can find the main provisions in relation to casework; see *Part B – Managing Legal Aid Work* for more information on the contractual relationship with the LSC.

The Unified Contract specification

- 1.05 The section of the contract that caseworkers will need to be familiar with is the Unified Contract specification. It can be downloaded from the webpage noted above. It is split into general rules and category specific rules; where the two conflict, the category specific rules take

precedence. These are discussed in detail in chapters 3 to 7 of this book.

The specification contains an introduction to the main workings of the various funding schemes. Section 1 explains how to apply the Funding Code and Regulations, when you need to provide information to another supplier, what you need to do if your client has misrepresented their circumstances, as well as your general powers and how to report controlled work claims. Section 2 gives information on financial eligibility (although it is not the main source document, see below), application procedures for controlled and licensed work, refusing and stopping work. Section 3 explains the scope of controlled work, while section 4 discusses the scope of licensed work. Sections 5 and 6 cover how you carry out controlled and licensed work, respectively. Section 7 deals with payment provisions (although rates of payment are shown in Part B – the payment annex). Section 8 gives an outline of the way claims for payment are assessed (although it is not the main source document, see below). Section 9 explains the statutory charge.

The remaining sections 10–16 are category specific:

Section 10 – Family

Section 11 – Immigration

Section 12 – Mental Health

Section 13 – Debt

Section 14 – Employment

Section 15 – Housing

Section 16 – Welfare Benefits

Frequently asked questions

- 1.06 The LSC has provided some answers to frequently asked questions in respect of Family, Immigration and Mental Health schemes on its website at: www.legalservices.gov.uk > Community Legal Service (CLS) > Pay rates and schemes. They can be downloaded from the document box on the right-hand side. They are useful because they deal with a number of queries that arise in day-to-day practice, and may well provide the answer to the particular question you have.

Eligibility guidance

- 1.07 Civil and Family eligibility guidance is found in Volume 2 of the LSC Manual (for controlled work) or Volume 3 (certificated work). You

can download it from the LSC's website at www.legalservices.gov.uk > Community Legal Service (CLS) > Civil legal aid eligibility. See chapter 2 of this book for more information about eligibility.

The Funding Code

- 1.08 The Funding Code is the set of rules that govern whether an individual's case can be funded under legal aid. It is a key reference document, whether you are granting legal aid yourself, as controlled work, or under devolved powers, or whether you are submitting an application for the LSC to decide. It is in Volume 3 of the LSC Manual. You can download the funding code from the LSC's website at www.legalservices.gov.uk > Community Legal Service (CLS) > Civil legal aid eligibility > The Funding Code.

The Funding Code includes criteria (which define the services the LSC will fund, from basic legal advice to representation in court proceedings), procedures (which set out how the LSC makes decisions about funding Civil legal aid), and decision-making guidance.

Costs assessment guidance

- 1.09 Many caseworkers focus so hard on achieving the best possible job for their clients that they lose sight of the financial side of the case. This is not sustainable, so it is important to be aware of the rules that govern what you can and cannot claim for.

A revised version of the costs assessment guidance was released in October 2007, to cover the introduction of fixed fees. For the first time, it applied to both controlled and licensed work, and equally to private practice and the not-for-profit sectors. It is in Volume 2 of the LSC Manual. The guidance can be downloaded from www.legalservices.gov.uk > Community Legal Service (CLS) > Pay rates and schemes > Guidance on fees and funding. See chapters 10 and 11 of this book for more information about getting paid.

Fee exemption and remission

- 1.10 The fee exemption and remission scheme is administered by Her Majesty's Court Service (HMCS) and is not part of legal aid funding. Court fees are a recoverable disbursement under a full legal aid representation certificate, but not under Legal Help. Legally aided clients are not automatically exempt from fees, but may apply for exemption or remission on grounds of means. For more information,

see HMCS leaflet EX160A 'Court fees – Do you have to pay them?' It can be downloaded from <http://www.hmcourts-service.gov.uk>.

Criminal defence – key documentation

The Unified Contract (Crime)

- 1.11 The Unified Contract replaced the General Criminal Contract on 14 July 2008. It is in Volume 4 of the LSC Manual. The contract can be downloaded from www.legalservices.gov.uk > Criminal Defence Service (CDS) > Crime contracts > Unified Contract (Crime) July 2008.

This section sets out where you can find the main provisions in relation to casework; see *Part B – Managing Legal Aid Work* for more information on the contractual relationship with the LSC.

The Unified Contract Crime specification (July 2008)

- 1.12 The section of the contract that caseworkers will need to be familiar with is the Unified Contract specification. It can also be downloaded from the webpage noted above.

Part A covers general rules, among other things: qualifying criteria, financial eligibility tests (although this is not the main source document, see below), limits on claims, application rules and forms, unique file numbers, devolved powers, errors, misrepresentation, where you can perform contract work, continuity of service, very high cost cases, change of solicitor/counsel, payment provisions, time standards, matter or case ends, solicitors with higher court advocacy rights, the Independent Funding Adjudicator and duty solicitor requirements.

Part B gives specific rules on classes and units of work through the investigations, proceedings and appeals and reviews stages of a case. It also provides rules relating to prison law and associated CLS work. For more information about the way these schemes work, see chapter 9 of this book.

Part C provides information about claims assessment and review procedures (although this is not the main source document, see below).

Annexes contain the fees, Specialist Quality Mark (SQM) definitions and boundary areas.

Eligibility guidance

- 1.13 Advice in the police station is not means tested.

Representation in the magistrates' court is means tested. Eligibility guidance is in Volume 4, Part E of the LSC Manual. You can download the guidance from www.legalservices.gov.uk > Criminal Defence Service (CDS) > Criminal legal aid eligibility > Means testing.

In the Crown Court, Recovery of Defence Costs Orders (RDCOs) were introduced in 2001. RDCOs can be made by the judge at the end of a trial, if he or she deems that the defendant could and should bear the burden of their defence themselves. For more information about RDCOs, see chapter 9 of this book.

Costs assessment guidance

- 1.14 Ensuring that you will be paid is as important in criminal defence work as in Civil and Family, mentioned above. There is an outline of general principles in Volume 4, Part H of the LSC Manual; but that refers you to the LSC's website for the definitive rules.

The Integrated Criminal Bills Assessment Manual (CBAM) elaborates many of the principles in the contract. At the time of writing, the LSC was in the process of updating the Manual to reflect the change from the General Criminal Contract (Jan 08) to the Unified Contract (Crime) (July 2008). The contract changes in July 2008 were to the structure and paragraph numbering of the contract, but not to the operation of the scheme. Therefore, the Jan 08 edition of the CBAM is correct in terms of its substantive content, though the cross-references to the contract are out of date. It can be found at: www.legalservices.gov.uk > Criminal Defence Service (CDS) > Pay rates and schemes > Guidance on fees and funding.